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Supreme Court of the United States

OCTOBER TERM, 1957

No. 396

HERBERT BROWNELL, JR., ATTORNEY GENERAL,
PETITIONER,

vs.

JIMMIE QUAN, ALSO KNOWN AS QUAN DUNG
NGOON, JOW MUN YGW, JOW KWONG YEONG,
ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petition for Certiorari

Filed August 23, 1957

Certiorari Granted October 28, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1957

No. 396

HERBERT BROWNELL, JR., ATTORNEY GENERAL,
PETITIONER,

vs.

JIMMIE QUAN, ALSO KNOWN AS QUAN DUNG
NGOON, JOW MUN YOW, JOW KWONG YEONG,
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ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF
APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,772

JIMMIE QUAN, AKA QUAN DUNG NGOON

No. 12,773

JOW MUN YOW AND JOW KWONG YEONG

No. 12,774

YEN MOK

No. 12,800

LAM WING

Appellants

v.

HERBERT BROWNELL, JR., Attorney General of the
United States, *Appellee*

JOINT APPENDIX

IN UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF COLUMBIA CIRCUIT

Complaint in No. 12,772—Filed June 27, 1955

The plaintiff, by his attorney, respectfully alleges:

1. That this is an action for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review under the Administrative Procedure Act (5 U.S.C. 1001 et seq.).
2. That the plaintiff is a citizen of China.
3. That the defendant is the Attorney General of the United States and is charged with the statutory duty to determine after appropriate hearings whether aliens are to be excluded and deported from the United States and super-

vises the administration of the Immigration and Naturalization Service.

4. That the plaintiff is not a permanent resident of the United States.

5. That the plaintiff last arrived in the United States on or about July 13, 1949, and sought admission to the United States, claiming American citizenship.

6. That thereafter plaintiff was paroled into the United States and has remained at large ever since.

7. That a final order was entered against the plaintiff on December 3, 1954, excluding him from the United States.

8. That the plaintiff filed an application under section 243(h) of the Immigration and Nationality Act of 1952, requesting that he not be deported to Communist China upon the ground that if he is sent there he will be subject to physical persecution. The plaintiff has also requested that his parole be continued under Section 212(d)(5) of the Immigration and Nationality Act, and both of the plaintiff's applications have been denied.

9. That the defendant has designated Communist China as the place to which the plaintiff shall be deported and is threatening to send the plaintiff to Communist China through Hong Kong.

10. That the plaintiff is opposed to Communism and the plaintiff is anti-communist.

11. That if deported to Communist China, the plaintiff will suffer physical persecution.

12. That the defendant has advised the plaintiff that his application claiming physical persecution will not be considered upon the ground that a claim of physical persecution may not be asserted in exclusion cases.

13. That the defendant, acting through his agents, has arbitrarily and contrary to law determined not to honor any claims of persecution made by Chinese aliens in exclusion cases and has arbitrarily and contrary to law refused to exercise discretion to permit the plaintiff to remain in the United States.

14. That the plaintiff is not subject to deportation to Communist China, but on the contrary is deportable only to Hong Kong which is the country from whence he came.

15. That the order directing the deportation of plaintiff to Communist China, through Hong Kong, is arbitrary, contrary to law, a gross abuse of discretion, and null and void.

16. That the deportation of the plaintiff to Communist China is a violation of the provisions of the Immigration and Nationality Act, and the regulations of the Immigration Service, and deprives the plaintiff of due process of law.

17. That the defendant has advised the plaintiff to be ready for deportation to Communist China on July 8, 1955, and unless restrained will deport the plaintiff to Communist China causing him irreparable injury.

WHEREFORE, plaintiff prays for a judgment:

(a) Declaring that he is not deportable to Communist China;

(b) Directing the defendant to consider his claim of physical persecution;

(c) Restraining the defendant from deporting plaintiff to Communist China;

(d) For such other and further relief as may be appropriate.

JACK WASSERMAN,
Attorney for Plaintiff,
Warner Building
Washington 4, D. C.

FALLON & HARGREAVES,
Of Counsel.

3 IN UNITED STATES DISTRICT COURT

Motion for Preliminary Injunction—Filed June 28, 1955

The plaintiff, Jimmie Quan, by his attorneys moves the Court for an order granting a preliminary injunction against the defendant, restraining defendant from appre-

hending and deporting the plaintiff pending determination of this suit and until further order of the Court, upon the grounds and in accordance with the prayers set forth in the complaint and other papers filed herein.

JACK WASSERMAN,
Attorney for Plaintiff.

(Attached affidavit omitted in printing)

IN UNITED STATES DISTRICT COURT

Motion to Dismiss—Filed July 1, 1955

Comes now the defendant and by his attorney, the United States Attorney, moves this honorable Court to dismiss the complaint filed herein on the grounds that the Court lacks jurisdiction over the subject matter, the complaint fails to state a claim upon which relief may be granted, and fails to comply with the provisions of Rule 8(a), Federal Rules of Civil Procedure in that it does not contain a short and plain statement of the claim showing that the pleader is entitled to relief.

LEO A. ROVER,
United States Attorney.

IN UNITED STATES DISTRICT COURT

Order Dismissing Complaint—Filed July 1, 1955

This cause having come on for hearing on plaintiff's motion for a preliminary injunction and the defendant having filed a motion to dismiss the complaint herein, the same having been filed with the consent of attorney for the plaintiffs and on order of the Court, and both motions having been argued and the Court having found that it is without jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief may be granted, it is this 1st day of July, 1955,

ORDERED that the complaint herein be and the same is hereby dismissed and the motion for preliminary injunction be and the same is hereby denied, and it is

FURTHER ORDERED that plaintiff's oral application for a stay pending appeal be and is hereby denied.

RICHMOND B. KEECH,
Judge.

IN UNITED STATES DISTRICT COURT

Complaint in No. 12,773—Filed June 28, 1955

The plaintiffs, by their attorneys, respectfully allege:

1. That this is an action for a declaratory judgment under the Declaratory Judgment Act (28 U. S. C. 2201) and for review under the Administrative Procedure Act (5 U. S. C. 1001 et seq).
2. That the plaintiffs are natives and citizens of China.
3. That the defendant is the Attorney General of the United States and is charged with the statutory duty to determine, after appropriate hearings, whether aliens are to be excluded or deported from the United States and supervises the administration of the Immigration and Naturalization Service.
4. That the plaintiffs are not permanent residents of the United States.
5. That the plaintiffs arrived in the United States on or about October 21, 1951, and sought admission to the United States claiming American citizenship.
6. That on July 22, 1952, the plaintiffs were paroled into the United States pending final determination of their claims to American citizenship.
7. That on August 14, 1953, final orders were entered in the plaintiffs' case excluding them from the United States.
8. That from July 22, 1952, until the present date, the plaintiffs have been at large on parole.
9. That the plaintiffs filed applications under Section 243(h) of the Immigration and Nationality Act of

5. 1952, requesting that they be not deported to Communist China upon the ground that if they are sent there they will be subject to physical persecution.

10. That the defendant has designed Communist China as the place to which the plaintiffs shall be deported and is threatening to send the plaintiffs to Communist China through Hong Kong.

11. That the plaintiffs are opposed to Communism and the plaintiffs are anti-communist.

12. That if deported to Communist China, the plaintiffs will suffer physical persecution.

13. That the defendant has advised the plaintiffs that their applications claiming physical persecution will not be considered upon the ground that claims of physical persecution may not be asserted in exclusion cases.

14. That the defendant, acting through his agents, has arbitrarily and contrary to law determined not to honor any claims of persecution made by Chinese aliens in exclusion cases and has arbitrarily and contrary to law refused to exercise discretion to permit the plaintiffs to remain in the United States.

15. That the plaintiffs are not subject to deportation to Communist China.

16. That the order directing the deportation of plaintiffs to Communist China, through Hong Kong, is arbitrary, contrary to law, a gross abuse of discretion, and null and void.

17. That the deportation of the plaintiffs to Communist China is a violation of the provisions of the Immigration and Nationality Act, and the regulations of the Immigration Service, and deprives the plaintiffs of due process of law.

18. That the defendant has advised the plaintiffs to be ready for deportation to Communist China on July 8, 1955, and unless restrained will deport the plaintiffs to Communist China causing them irreparable injury.

WHEREFORE, plaintiffs pray for a judgment:

(a) Declaring that they are not deportable to Communist China; *

6. (b) Directing the defendant to consider their claims of physical persecution;

(c) Restraining the defendant from deporting plaintiffs to Communist China;

(d) For such other and further relief as may be appropriate.

JACK WASSERMAN,
Attorney for Plaintiff,
Warner Bldg.,
Washington 4, D. C.

GARCIA & WONG,
Of Counsel.

IN UNITED STATES DISTRICT COURT

Motion for Preliminary Injunction—Filed June 28, 1955

The plaintiffs, Jow Mun Yow and Jow Kwong Yeong, by their attorneys move the Court for an order granting a preliminary injunction against the defendant, restraining defendant from apprehending and deporting plaintiffs pending determination of this suit and until further order of the Court, upon the grounds and in accordance with the prayers set forth in the complaint and other papers filed herein.

JACK WASSERMAN,
Attorney for Plaintiff.

(Attached Affidavit omitted in printing)

IN UNITED STATES DISTRICT COURT

Motion to Dismiss—Filed July 1, 1955

Comes now the defendant and by his attorney, the United States Attorney, moves this honorable Court to dismiss the complaint filed herein on the grounds that the Court lacks jurisdiction over the subject matter, the complaint

fails to state a claim upon which relief may be granted, and fails to comply with the provisions of Rule 8(a), Federal Rules of Civil Procedure in that it does not contain a short and plain statement of the claim showing that the pleader is entitled to relief.

LEO A. ROVER,
United States Attorney.

IN UNITED STATES DISTRICT COURT

Order Dismissing Complaint—Filed July 1, 1955

This cause, having come on for hearing on plaintiffs' motion for a preliminary injunction and the defendant having filed a motion to dismiss the complaint herein, together with a memorandum of points and authorities in support thereof, the same having been filed with the consent of attorney for the plaintiffs and on order of the Court, and both motions having been argued and the Court having found that it is without jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief may be granted, it is this 1st day of July, 1955.

ORDERED that the complaint herein be and the same is hereby dismissed and the motion for preliminary injunction be and the same is hereby denied, and it is

FURTHER ORDERED that plaintiffs' oral application for a stay pending appeal be and is hereby denied.

RICHMOND B. KEECH,
Judge.

IN UNITED STATES DISTRICT COURT

Complaint in No. 12,774—Filed July 1, 1955

The plaintiff, by his attorneys, respectfully alleges: 2

1. That this is an action for a declaratory judgment under the Declaratory Judgment Act (28 U.S.C. 2201) and for review under the Administrative Procedure Act (5 U.S.C. 1001 et seq.).

2. That the plaintiff is a native and citizen of China.
3. That the defendant is the Attorney General of the United States and is charged with the statutory duty to determine, after appropriate hearings, whether
8. aliens are to be excluded or deported from the United States and supervises the administration of the Immigration and Naturalization Service.
4. That the plaintiff is not a permanent resident of the United States.
5. That the plaintiff arrived in the United States in December of 1954, and thereafter was paroled into the United States.
6. That on May 23, 1955, a final order was entered in the plaintiff's case excluding him from the United States.
7. That the plaintiff filed an application under Section 243(h) of the Immigration and Nationality Act of 1952, requesting that he not be deported to Communist China upon the ground that if he is sent there, he will be subject to physical persecution.
8. That the defendant has designated Communist China as the place to which the plaintiff shall be deported and is threatening to send the plaintiff to Communist China through Hong Kong.
9. That the plaintiff is opposed to Communism and the plaintiff is an anti-communist.
10. That if deported to Communist China, the plaintiff will suffer physical persecution.
11. That the defendant has advised the plaintiff that his application claiming physical persecution will not be considered upon the ground that claims of physical persecution may not be asserted in exclusion cases.
12. That the defendant, acting through his agents, has arbitrarily and contrary to law determined not to honor any claims of persecution made by Chinese aliens in exclusion cases and has arbitrarily and contrary to law refused to exercise discretion to permit the plaintiff to remain in the United States.

13. That the plaintiff is not subject to deportation to Communist China.

14. That the order directing the deportation of the plaintiff to Communist China, through Hong Kong, is arbitrary, contrary to law, a gross abuse of discretion, and null and void.

15. That the deportation of the plaintiff to Communist China is a violation of the provisions of the Immigration and Nationality Act, and the regulations of the Immigration Service, and deprives the plaintiff of due process of law.

16. That the defendant has advised the plaintiff to be ready for deportation to Communist China on July 6, 1955, and unless restrained will deport the plaintiff to Communist China causing him irreparable injury.

WHEREFORE, plaintiff prays for a judgment:

(a) Declaring that he is not deportable to Communist China;

(b) Directing the defendant to consider his claim of physical persecution;

(c) Restraining the defendant from deporting the plaintiff to Communist China;

(d) For such other and further relief as may be appropriate.

JACK WASSERMAN,
Attorney for Plaintiff,
902 Warner Building,
Washington 4, D. C.

ANDREW REINER,
Of Counsel.

IN UNITED STATES DISTRICT COURT

Motion for Preliminary Injunction—Filed July 1, 1955

The plaintiff, Yen Mok, by his attorneys, moves the Court for an order granting a preliminary injunction against the defendant, restraining defendant from apprehending and deporting plaintiff pending determination of this suit and until further order of the Court, upon the

grounds and in accordance with the prayers set forth in the complaint and other papers filed herein.

JACK WASSERMAN,
Attorney for Plaintiff.

(Attached affidavit omitted in printing)

10 IN UNITED STATES DISTRICT COURT

Motion to Dismiss—Filed July 1, 1955

Comes now the defendant and by his attorney, the United States Attorney, moves this honorable Court to dismiss the complaint filed herein on the grounds that the Court lacks jurisdiction over the subject matter, the complaint fails to state a claim upon which relief may be granted, and fails to comply with the provisions of Rule 8(a), Federal Rules of Civil Procedure in that it does not contain a short and plain statement of the claim showing that the pleader is entitled to relief.

LEO A. ROVER,
United States Attorney.

IN UNITED STATES DISTRICT COURT

Order Dismissing Complaint—Filed July 1, 1955

This cause having come on for hearing on plaintiff's motion for a preliminary injunction and the defendant having filed a motion to dismiss the complaint herein, the same having been filed with the consent of attorney for the plaintiff and on order of the Court, and both motions having been argued and the Court having found that it is without jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief may be granted, it is this 1st day of July, 1955,

ORDERED that the complaint herein be and the same is hereby dismissed and the motion for preliminary injunction be and the same is hereby denied, and it is

FURTHER ORDERED that plaintiff's oral application for a stay pending appeal be and is hereby denied.

RICHMOND B. KEECH,
Judge.

IN UNITED STATES DISTRICT COURT

Complaint—Filed July 6, 1955

The plaintiff by his attorneys, respectfully alleges:

1. That this is an action for a declaratory judgment under the Declaratory Judgment Act (28 U. S. C. 2201) and for review under the Administrative Procedure Act (5 U.S.C. 1001 et seq).

2. That the plaintiff is a native and citizen of China.

3. That the defendant is the Attorney General of the United States and is charged with the statutory duty to determine, after appropriate hearings, whether aliens are to be excluded or deported from the United States and supervises the administration of the Immigration and Naturalization Service.

4. That the plaintiff is not a permanent resident of the United States.

5. That the plaintiff arrived in the United States originally in 1943 as a seaman. He thereafter followed his calling as a seaman from 1943 to 1945 on American vessels and received a presidential citation during World War II.

6. Plaintiff last arrived in the United States on April 17, 1952, and was ordered excluded and thereafter paroled into the United States.

7. Plaintiff filed an application under Section 243(h) of the Immigration and Nationality Act of 1952, requesting that he not be deported to Communist China upon the ground that if he is sent there he will be subject to physical persecution.

8. That the defendant has designated Communist China as the place to which the plaintiff shall be deported and is

threatening to send the plaintiff to Communist China through Hong Kong.

9. That the plaintiff is opposed to Communism and the plaintiff is anti-communist.

10. That if deported to Communist China, the plaintiff will suffer physical persecution.

11. That the defendant has advised the plaintiff that his application claiming physical persecution will not be considered upon the ground that claims of physical persecution may not be asserted in exclusion cases.

12. That the defendant, acting through his agents, has arbitrarily and contrary to law determined not to honor any claims of persecution made by Chinese aliens in exclusion cases and has arbitrarily and contrary to law refused to exercise discretion to permit the plaintiff to remain in the United States.

13. That the plaintiff is not subject to deportation to Communist China.

14. That the order directing the deportation of the plaintiff to Communist China, through Hong Kong, is arbitrary, contrary to law, a gross abuse of discretion, and null and void.

15. That the deportation of the plaintiff to Communist China is a violation of the provisions of the Immigration and Nationality Act, and the regulations of the Immigration Service, and deprives the plaintiff of due process of law.

16. That the defendant has advised the plaintiff to be ready for deportation to Communist China on July 6, 1955, and unless restrained will deport the plaintiff to Communist China causing him irreparable injury.

WHEREFORE, plaintiff prays for a judgment:

(a) Declaring that he is not deportable to Communist China;

(b) Directing the defendant to consider his claim of physical persecution;

(c) Restraining the defendant from deporting the plaintiff to Communist China;

(d) For such other and further relief as may be appropriate.

JACK WASSERMAN,
Attorney for Plaintiff,
Warner Building,
Washington 4, D. C.

DAVID CARLINER,
Attorney for Plaintiff,
Warner Building,
Washington 4, D. C.

ABRAHAM LEBENKOFF,
Of Counsel.

13. IN UNITED STATES DISTRICT COURT

Motion for Preliminary Injunction—Filed July 6, 1955

The plaintiff, Lam Wing, by his attorneys moves the Court for an order granting a preliminary injunction against the defendant, restraining defendant from apprehending and deporting the plaintiff pending determination of this suit and until further order of the Court, upon the grounds and in accordance with the prayers set forth in the complaint and other papers filed herein.

JACK WASSERMAN,
Attorney for Plaintiff.

(Attached affidavit omitted in printing)

IN UNITED STATES DISTRICT COURT

Motion to Dismiss—Filed July 6, 1955

Comes now the defendant and, by his attorney, the United States Attorney, moves this honorable Court to dismiss the complaint filed herein on the grounds that the Court lacks jurisdiction over the subject matter, the complaint fails to state a claim upon which relief may be granted, and fails to

comply with the provisions of Rule 8(a), Federal Rules of Civil Procedure, in that it does not contain a short and plain statement of the claim showing that the pleader is entitled to relief.

LEO A. ROVER,
United States Attorney.

IN UNITED STATES DISTRICT COURT

Stipulation of Facts—Filed July 6, 1955

It is hereby stipulated by and between the attorneys for the parties hereto that the plaintiff is an alien, a native and citizen of China, who last entered the United States at Baltimore, Maryland on April 17, 1952. On that date he was ordered detained on board as a "male fide" seaman by the immigration authorities, and thus ordered excluded from the United States. He was subsequently paroled
14 into the United States under bond and his case re-examined at New York on May 23, 1952, at which time it was concluded that the evidence sustained the exclusion order of April 17, 1952 and that order remained in effect.

On June 20, 1955 plaintiff submitted an application pursuant to Section 243(h) of the Immigration and Nationality Act of 1952, 8 U.S.C. 1253 (h), to have his deportation withheld on the ground that he would be subject to physical persecution if returned to China. The immigration authorities, to which the application was submitted, advised the plaintiff that they would not consider the application on the ground that as a matter of law such relief was not available to an alien ordered excluded from the United States.

(S.) DAVID CARLINER,
Attorney for Plaintiff.

(S.) WILLIAM F. BECKER,
*Assistant
United States Attorney.*

(S.) WILLIAM B. TAFFET,
*Special Assistant to the
United States Attorney.*

IN UNITED STATES DISTRICT COURT

Order Dismissing Complaint—Filed July 6, 1955

This cause having come on for hearing on plaintiff's motion for a preliminary injunction and the defendant having filed a motion to dismiss the complaint herein, the same having been filed with the consent of attorney for the plaintiff and on order of the Court, and both motions having been argued and the Court having found that it is without jurisdiction of the subject matter and that the complaint fails to state a claim upon which relief may be granted, it is this 6th day of July, 1955,

ORDERED that the complaint herein be and the same is hereby dismissed and the motion for preliminary injunction be and the same is hereby denied, and it is

FURTHER ORDERED that plaintiff's oral application for a stay pending appeal be and is hereby denied.

RICHMOND B. KEECH,
Judge.

15 IN UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12772

JIMMIE QUAN, a/k/a QUAN DUNG NGOON, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

No. 12773

JOW MUN YOW and JOW KWONG YEONG, APPELLANTS

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

No. 12774

YEN MOK, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

No. 12800

LAM WING, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

Appeals from the United States District Court
for the District of Columbia

Opinion—June 27, 1957

Mr. David Carliner, with whom *Mr. Jack Wasserman*
was on the brief, for appellants.

16 *Mr. John W. Kern, III*, Assistant United States
Attorney, with whom *Mr. Oliver Gasch*, United States
Attorney, and *Mr. Lewis Carroll*, Assistant United
States Attorney, were on the brief, for appellee.

Before PRETTYMAN, FAHY and BURGER, Circuit Judges.

PRETTYMAN, *Circuit Judge*: These are four appeals from judgments of the District Court dismissing complaints in civil actions. The actions were brought by natives of China who arrived in the United States at various dates seeking admission. They were paroled into the United States in exclusion proceedings. Thereafter they were ordered excluded and deported to the place whence they came, which was Hong Kong.¹ They claim that deportation to Hong Kong is in fact deportation to Communist China and that if sent there they will be subject to physical persecution. They seek the benefit of Section 243(h) of the Immigration and Nationality Act of 1952,² which provides:

"The Attorney General is authorized to withhold deportation of any alien within the United States to any country in which in his opinion the alien would be subject to physical persecution and for such period of time as he deems to be necessary for such reason."

The Government says the appellants are not "within the United States" and therefore the Attorney General has no power under the statute to withhold their deportation. The question before us is whether he has that power. We are not concerned with how he should exercise the power if he has it. We have to decide merely whether he has it.

Section 212(d)(5) of the 1952 Act³ provides in pertinent part:

17 "The Attorney General may in his discretion *parole into the United States* temporarily under such conditions as he may prescribe for emergent reasons or for reasons deemed strictly in the public interest any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien * * *." (Emphasis ours.)

¹ Appellant Lam Wing was paroled after an initial exclusion order.

² 66 STAT. 214, 8 U.S.C.A. § 1253(h).

³ 66 STAT. 188, 8 U.S.C.A. § 1182(d)(5).

Thus it is clear that under the Act an alien may be paroled *into* the United States as well as admitted to it. In either event, he is, in the statutory terms, in the United States. We think an alien paroled into the United States within the meaning of Section 212(d)(5)⁴ is within the United States within the meaning of Section 243(h). Therefore as to him the Attorney General has a discretionary power to withhold deportation.

The Attorney General argues that there is a difference between excluding an alien and deporting him and that these aliens are to be excluded. But the very sentence of the statute which provides for excluding aliens⁵ uses the word "deported". The concluding clause in that sentence is "shall be allowed to enter or shall be excluded and deported." And the sentence which provides for the return of excluded aliens on the vessel bringing them uses the words "deported" and "deportation".⁶ The basic sentence is: "Any alien * * * who is excluded * * * shall be immediately deported * * *." And the proviso in that sentence is "unless the Attorney General, in an individual case, in his discretion, concludes that immediate deportation is not practicable or proper." The 18 regulations reflect the same idea. For example, Section 237.1, Title 8, Code of Federal Regulations (1952) speaks of "The immediate deportation of an excluded alien". The distinction relevant to Section 243 is between aliens who are, legally speaking, in the United States, by entry or parole, and those who, legally speaking, are not within the borders.

That the predecessor section to Section 243(h) of the 1952 Act, which was Section 23 of the 1950 Act,⁷ applied to an alien who was excluded was settled by *Ng Lin Chong v. McGrath*.⁸ Section 243(a) of the 1952 Act applies to

⁴ The Act contains a number of provisions relating to aliens within the United States. See Sec. 237(a), 66 STAT. 201, 8 U.S.C.A. § 1227(a); Sec. 237(b), 66 STAT. 201, 8 U.S.C.A. § 1227(b); Sec. 262, 66 STAT. 224, 8 U.S.C.A. § 1302; Sec. 265, 66 STAT. 225, 8 U.S.C.A. § 1305; Sec. 360(a), 66 STAT. 273, 8 U.S.C.A. § 1503(a).

⁵ Sec. 236(a), 66 STAT. 200, 8 U.S.C.A. § 1226(a).

⁶ Sec. 237(a), 66 STAT. 201, 8 U.S.C.A. § 1227(a).

⁷ 64 STAT. 1010.

⁸ 91 U.S. App. D.C. 131, 202 F. 2d 316 (D.C. Cir. 1952).

aliens "in the United States". We think that section gives the Attorney General discretion in respect to the country to which he will order aliens deported, whether they are legally in the United States by entry or by parole.

The cases will be remanded to the District Court with instructions to enter declaratory judgments in accord with this opinion.

19 IN UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

No. 12,772

JIMMIE QUAN, a/k/a QUAN DUNG NGOON, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

No. 12,773

JOW MUN YOW and JOW KWONG YEONG, APPELLANTS

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

No. 12,774

YEN MOK, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

No. 12,800

LAM WING, APPELLANT

v.

HERBERT BROWNELL, JR., Attorney General
of the United States, APPELLEE

Appeals from the United States District Court
for the District of Columbia

Before PRETTYMAN, FAHY and BURGER, Circuit Judges.

Judgment—June 27, 1957

These cases came on to be heard on the records from the United States District Court for the District of Columbia, and were argued by counsel.

ON CONSIDERATION WHEREOF, It is ordered and adjudged by this Court that the judgments of the said District Court appealed from in these cases be, and they are hereby, reversed, and that these cases be, and they are hereby, remanded to the said District Court with instructions to enter declaratory judgments in accord with the opinion of this Court. 3

Dated: June 27, 1957.

Per Circuit Judge PRETTYMAN.

23 Clerk's Certificate to foregoing Transcript
Omitted in Printing

24 SUPREME COURT OF THE UNITED STATES
(Title Omitted)

Order Allowing Certiorari—October 28, 1957

The petition herein for a writ of certiorari to the United States Court of Appeals for the District of Columbia Circuit is granted. The case is transferred to the summary calendar and assigned for argument immediately following No. 105, which case is likewise transferred to the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.